

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

TERRANCE PAUL MCABEE-BEY,)
Petitioner,)
v.) Civ. A. No. 17-1340-GMS
JOHN CERINO, Clerk of Court, et al,)
Respondents.)

MEMORANDUM

I. INTRODUCTION

Presently before the court is a petition for a writ of habeas corpus (“petition”) filed by petitioner Terrance Paul McAbee Bey. (D.I. 1.) McAbee-Bey is a federal prisoner at the Big Spring Federal Correctional Institution in Big Spring, Texas. *See* Federal Bureau of Prisons Inmate Locator, <https://www.bop.gov/inmateloc/ocator>. He challenges his convictions for drug related crimes in the United States District Court for the District of South Dakota¹ on the ground that the District Court lacked jurisdiction to convict him because he is a “Moor of American descent.” (D.I. 1 at 2, 10) Although McAbee-Bey does not identify the authority under which he is pursuing habeas relief, the court presumes that he filed the petition pursuant to 28 U.S.C. § 2255 or 28 U.S.C. § 2241.

II. DISCUSSION

A district court may summarily dismiss a federal prisoner's habeas petition "if it plainly appears from the face of the petition and any exhibits annexed to it that the petitioner is not entitled to relief." *See Rule 4 of the Rules Governing Section 2255 Cases in the United States*

¹See *McAbee v. United States*, Civ. A. No. 17-4090-KES, R&R (D. S.D. Sept. 18, 2017).

District Court, 28 U.S.C. foll. § 2255. A federal prisoner challenging the legality of his conviction or sentence must file a motion to vacate, correct, or modify a sentence pursuant to § 2255 in the sentencing court. *See* 28 U.S.C. § 2255(a); *Davis v. United States*, 417 U.S. 333, 343-44 (1974); *In re Dorsainvil*, 119 F.3d 245, 249 (3d Cir. 1997). Conversely, a federal prisoner challenging his physical custody and the manner in which his sentence is being executed must file a petition for the writ of habeas corpus pursuant to § 2241 in the district of confinement. *See Rumsfeld v. Padilla*, 542 U.S. 426, 446-47 (2004); *United States v. Jack*, 774 F.2d 605, 607 n.1 (3d Cir. 1985)(a habeas corpus petition pursuant to § 2241 is appropriate in the district of confinement).

To the extent McAbee-Bey filed the instant petition pursuant to § 2255, the court does not have jurisdiction because he was not convicted or sentenced in the District of Delaware.² To the extent McAbee-Bey filed the instant petition pursuant to § 2241, the court does not have jurisdiction because he is not incarcerated within the District of Delaware. Thus, whether

²Moreover, McAbee-Bey's argument that the United States District Court for the District of South Dakota did not have jurisdiction to convict him because he is a Moorish citizen has no basis in law or fact. Regardless of McAbee-Bey's nationality or religion, he is subject to the laws of the jurisdiction in which he resides. *See, e.g., Jones-Bey v. Alabama*, 2014 WL 1233826, at *3 (N.D. Ala. Mar. 25, 2014)(“There is no basis in the law for such a claim” that the State of Alabama did not have jurisdiction to prosecute and imprison petitioner based on his ancestry as a “Moorish American.”); *Bey v. Bailey*, 2010 WL 1531172, at *4 (S.D.N.Y. Apr. 15, 2010)(“the suggestion that Petitioner is entitled to ignore the laws of the State of New York by claiming membership in the Moorish-American nation is without merit and cannot be the basis for habeas relief.”); *Caldwell v. Wood*, 2010 WL 5441670, at *17 (W.D.N.C. Dec. 28, 2010) (in a § 2254 case, finding that petitioner's allegation of membership in the Moorish-American Nation which entitled him to ignore state laws was ludicrous); *United States v. Lee-El*, 2009 WL 4508565 (D.Kan. Nov. 24, 2009) (collecting cases and finding that aliens in the United States, including aboriginal Moors and Moorish-Americans, must obey the laws of the United States).

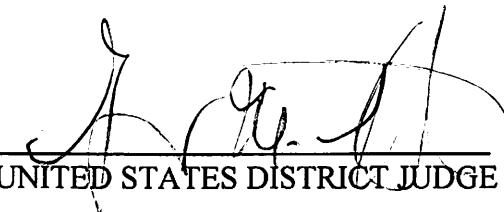
construed as filed under § 2255 or § 2241, the case cannot proceed in this court.

III. CONCLUSION

For the reasons set forth above, the court will summarily dismiss McAbee-Bey's petition for a writ of habeas corpus without issuing a certificate of appealability. *See* 28 U.S.C. § 2253(c)(2); *United States v. Eyer*, 113 F.3d 470 (3d Cir. 1997); 3d Cir. L.A.R. 22.2 (2011). A separate order follows.

Oct 20, 2017

DATE



UNITED STATES DISTRICT JUDGE